STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

IN THE MATTER OF THE JOINT PETITION OF UNITED TELEPHONE OF NEW JERSEY, INC. D/B/A SPRINT AND LTD HOLDING COMPANY FOR APPROVAL PURSUANT TO N.J.S.A. 48:2-51.1 AND N.J.S.A. 48:3-10 OF A CHANGE IN OWNERSHIP AND CONTROL	)	PROVISIONAL ORDER ON MOTION FOR SANCTIONS DOCKET NO. TM05080739

SERVICE LIST ATTACHED

BY COMMISSIONER CONNIE O. HUGHES:

This matter has been opened to the Board of Public Utilities ("Board") by the filing of a motion by the Division of the Ratepayer Advocate ("Ratepayer Advocate"), seeking sanctions as to United Telephone of New Jersey, Inc. d/b/a Sprint and LTD Holding Company (collectively, "Petitioners") for what the Ratepayer Advocate claims is a violation of a prior Order in this matter.

The Ratepayer Advocate, in its motion of December 8, 2005, claims that the Petitioners have failed to properly respond to RPA-8 and RPA-9, despite an explicit Order, dated November 23, 2005, directing such. This failure, asserts the Ratepayer Advocate, warrants the imposition of sanctions by the Board as provided by N.J.A.C. 1:1-10.5 and N.J.A.C. 1:1-14.14. The Ratepayer Advocate claims that as to RPA-8, Petitioners provided a copy of an Annual Report to the Board, along with a statement that the Petitioners do not track the CLEC's financials to the level requested by the discovery question. The Ratepayer Advocate claims, however, that the Annual Report indicates the existence of the necessary data, and that the Petitioners simply failed to provide it. As to RPA-9, the Petitioners responded by noting that no financial projections exists for future business, but the company continues to consider all options. From this, the Ratepayer Advocate infers that the Petitioners have projections, but refuse to provide them. As such, the Ratepayer Advocate believes that the Petitioners are in violation of the prior Order and sanctions should be imposed.

The Petitioners, in their response of December 19, 2005, note that the Board directed the disclosure based upon the availability of information. The Petitioners note, however, that the information is available in exactly the format provided; this report is the same one provided to the Board and reflects the only format in which the information is currently available. Development of the specific information that the Ratepayer Advocate seems to believe is responsive would take hundreds of man-hours, and would thus be overly burdensome. Likewise, as to RPA-9, the Petitioners are looking to leave the UNE-P market and as such have looked into sale to a third party. Thus, no projections have been developed, and the Petitioners

should not, in their estimation, be required to develop such simply because the Ratepayer Advocate believes that it should exist. Finally, Petitioners once again note the burdensome nature of discovery propounded upon them by the Ratepayer Advocate and the good faith in which they have attempted to comply with this and all discovery matters. As such, and in light of the Ratepayer Advocate's misunderstanding of the nature of available information, the Petitioners believe that the motion for sanctions should be denied.

The Ratepayer Advocate, on December 20, 2005, filed a reply, claiming that the absence of an affidavit is of significance and that the Petitioners are continuing to require a overly burdensome standard of relevance prior to providing discovery. The Ratepayer Advocate claims that the CLEC spin-off is relevant and that any information on it is relevant, and that the Petitioners have defined "projections" too narrowly, as it is "difficult to believe" that the data the Ratepayer Advocate seeks does not exist. Furthermore, the failure of the Petitioners to raise concerns about their ability to comply with the Order is evidence of bad faith and serves as a foundation for sanctions. Thus, the Ratepayer Advocate reasserts its request for sanctions.

DISCUSSION

Discovery before an agency such as the Board is controlled by the Uniform Administrative Procedure Rules, specifically N.J.A.C. 1:1-10.1 et seq. The purpose of discovery, as provided by N.J.A.C. 1:1-10.1, is to provide litigants access to "facts which tend to support or undermine their position or that of their adversary." Likewise, discovery is appropriate "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence," N.J.A.C. 1:1-10.1(b), and the test for the judge in reviewing a discovery motion requires the judge to "weigh the specific need for the information, the extent to which the information is within the control of the party and matters of expense, privilege, trade secret and oppressiveness," N.J.A.C. 1:1-10.1(c). Thus, the Ratepayer Advocate is correct in its assertion as to the fundamental nature of discovery and that the overall nature of the review includes, but is not limited to, consideration of the impacts listed in N.J.S.A. 48:2-51.1.

Within that framework, I HEREBY FIND as follows:

The direction to the Petitioners to provide the information requested in RPA-8 and RPA-9 was predicated upon a belief that the information existed in a readily accessible manner. The Petitioners now claim that it is not, and have provided what information they can without the burden becoming oppressive. I FIND this sufficient. Petitioners should not, as a default, be required to develop forms and formats of information that do not otherwise exist within the company. I FURTHER FIND that the statement of the Company is sufficient in this matter, and that an affidavit or other sworn statement is not necessary at this time and in this circumstance. The Board continues to have jurisdiction over the Petitioners, and will treat any deliberate misstatement to the Board, in this or any other circumstance, in an appropriate and proper fashion. The Petitioners have indicated to the Ratepayer Advocate and the Board that the information does not exist; and in the absence of evidence to the contrary, I take them at their word.

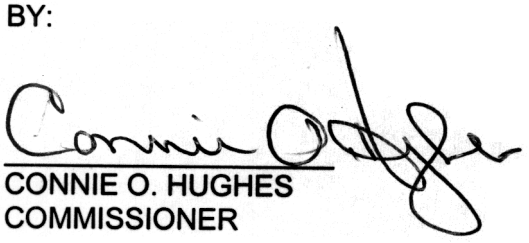
Furthermore, I call upon both parties to continue to litigate this matter with a level of cooperation that has traditionally been the hallmark of administrative proceedings such as this. The time and energy of all parties, including the Board, would be better spent considering the issues and not devoting time and resources to multiple disputes over discovery. In that spirit, sanctions are unnecessary and will not be imposed.

Accordingly, based upon the above, I HEREBY ORDER that this motion is DENIED.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 1-4-06

BY:



CONNIE O. HUGHES
COMMISSIONER

SERVICE LIST

Mark L. Mucci, Esq.
Colleen A. Foley, Esq.
Saul Ewing LLP
One Riverfront Plaza
Newark, NJ 07102

Donald Scarinci, Esq.
Andrew Indeck, Esq.
Scarinci and Hollenbeck, LLC
1100 Valley Brook Avenue
Lyndhurst, NJ 07071

Mark Trinchero, Esq.
Davis, White, Tremaine
1300 S.W. Fifth Avenue, Suite 2300
Portland, OR 97201

Zsuzsanna E. Benedek, Esq.
Sprint
240 North Third Street, Suite 201
Harrisburg, PA 17101

Seema M. Singh, Esq.,
Ratepayer Advocate and Director
Paul Flanagan, Esq.
Assistant Director
Christopher White, Esq.
Deputy Ratepayer Advocate
Jose Rivera-Benitez, Esq., Esq.
Assistant Deputy Ratepayer Advocate
Division of the Ratepayer Advocate
31 Clinton Street
P.O. Box 46005
Newark, NJ 07101

Anthony Centrella, Director
Division of Telecommunications
James Murphy
Competitive Services & Mergers
Lawanda Gilbert, Esq.
Counsel's Office
Rocco Della-Serra
Division of Telecommunications
Julie Huff
Division of Telecommunications
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Steven P. Weissman, Esq.
Weissman & Mintz, LLC
One Executive Drive
Suite 200
Somerset, NJ 08873

Sumanta Ray
Research Economist
CWA District One
80 Pine Street, 37th Floor
New York, NY 10005

Debbie Goldman
Research Economist
CWA, AFL-CIO
501 Third Street N.W.
Washington, D.C. 20001

Debbie Goldman
Research Economist
CWA, AFL-CIO
501 Third Street N.W.
Washington, D.C. 20001

William K. Mosca, Jr., Esq.
Wolf, Block, Schorr & Solis-Cohen LLP
101 Eisenhower Parkway
Roseland, NJ 07068

Frederick C. Pappalardo, Esq.
AT&T Communications of NJ, L.P.
340 Mt. Kemble Avenue
Morristown, NJ 07962

Kenneth J. Sheehan
Jeff Slutzky
Deputy Attorneys General
State of New Jersey, Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101